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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,418	06/24/2003	Sunichi Sato	2271/53467-A1	9699
23432 7590 09/28/2009 COOPER & DUNHAM, LLP 30 Rockefeller Plaza 20th Floor NEW YORK, NY 10112				
EXAMINER				
MEINZ, LAURA MARY				
ART UNIT		PAPER NUMBER		
2813				
MAIL DATE		DELIVERY MODE		
09/28/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/603,418

**Applicant(s)**

SATO, SUNICHI

**Examiner**

Laura M. Menz

**Art Unit**

2813

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22,38 and 60-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,38 and 60-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Reissue Applications***

Claims 22, 38, 60-68 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the oath is set forth in the discussion above in this Office action.

1) The oath must identify at least one error in the original patent which has not been corrected by the parent reissue application or an earlier reissue application. In this case, the error identified is the same error stated in parent reissue 09/860369.

Where a continuation reissue application is filed with a copy of the reissue oath /declaration from the parent reissue application, and the parent reissue application is not to be abandoned, the reissue oath /declaration should be accepted by the Office of Initial Patent Examination without further evaluation, \*because< it is an oath /declaration, albeit improper under 35 U.S.C. 251. The examiner should, however, reject the claims of the continuation reissue application under 35 U.S.C. 251 as being based on an oath /declaration that does not identify an error being corrected by the continuation reissue application, and should require a new oath /declaration. 37 CFR 1.175(e) states that " the filing of any continuing reissue application which does not replace its parent reissue application must include an oath or declaration, which pursuant to [37 CFR 1.175(a)(1) ], identifies at least one error in the original patent which has not been corrected by the parent reissue application or an earlier reissue

application." One of form paragraphs 14.01.01 through 14.01.03 may be used.

Where a continuation reissue application is filed with a copy of the reissue oath /declaration from the parent reissue application, and the parent reissue application is, or will be abandoned, the copy of the reissue oath /declaration should be accepted by \*>the Office of Patent Application Processing (OPAP)<, and the examiner should check to ensure that the oath /declaration identifies an error which is still being corrected in the continuation application. If a preliminary amendment was filed with the continuation reissue application, the examiner should check for the need of a supplemental reissue oath /declaration. Pursuant to 37 CFR 1.175 (b)(1), for any error corrected via the preliminary amendment which is not covered by the oath or declaration submitted in the parent reissue application, applicant must submit a supplemental oath /declaration stating that such error arose without any deceptive intention on the part of the applicant. See MPEP § 1414.01.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura M. Menz whose telephone number is (571) 272-1697. The examiner can normally be reached on M-T, R-F 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Landau can be reached on (571) 272-1731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura M Menz/  
Primary Examiner, Art Unit 2813

08/05/09